C1

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

File: WAC 01 219 52372 Office: CALIFORNIA SERVICE CENTER Date: SEP - 2 2

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Acting Director of the California Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Pentecostal church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4) in order to employ her as a religious instructor.

The acting director denied the petition, finding that the petitioner failed to establish that the beneficiary had been continuously carrying on a full-time salaried religious occupation for the two-year period immediately preceding the filing date of the petition. Specifically, the director determined that the beneficiary's part-time employment did not constitute qualifying employment for classification as a special immigrant religious worker.

On appeal, counsel asserts that there is no requirement in the statute or the regulations that the beneficiary's qualifying employment must be full-time. Counsel further asserts that the director failed to take into consideration the additional hours the beneficiary worked outside of the church as part of her duties as a religious instructor. Counsel insists that the beneficiary has been engaged in full-time employment if her additional hours outside the church are taken into account.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
>
> (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
>
> (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in

> section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

Pursuant to 8 C.F.R. § 204.5(m)(1):

> All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on May 1, 2001. Therefore, the petitioner must establish that the beneficiary was continuously performing as a full-time salaried religious instructor since at least May 1, 1999.

The statute and its implementing regulations require that a beneficiary had been continuously carrying on the religious occupation specified in the petition for the two years preceding filing. Because the statute requires two years of continuous experience in the same position for which special immigrant classification is sought, the Bureau interprets its own regulations to require that, in cases of lay persons seeking to engage in a religious occupation, the prior experience must have been full-time salaried employment in order to qualify.

The legislative history of the religious worker provision of the Immigration Act of 1990 reflects that a substantial amount of case law has developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision. *See* H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the immediately preceding two years. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged "principally" in such duties. "Principally" was defined as more than 50 percent of the person's working time. Under prior law a minister of religion was required to demonstrate that he/she had been "continuously" carrying on the vocation of minister for the two years immediately preceding the time of application. The term "continuously" was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

The term "continuously" also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a fulltime student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other employment *Matter of Bisulca*, 10 I&N Dec. 612 (Reg. Comm. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Comm 1963).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be fulltime and salaried. To find otherwise would be outside the intent of Congress.

In this case, the petitioner claims that the beneficiary has served the church as a religious instructor since December 1998. In response to a Bureau request for additional evidence, the petitioning church stated the beneficiary worked 32 hours per week as a religious instructor and provided the following breakdown of the beneficiary's weekly schedule:

Monday - Saturday	10:00 a.m. - 12:00 p.m.	(12 hours weekly)
Monday - Saturday	8:00 p.m. - 10:00 p.m.	(12 hours weekly)
Saturday	5:00 p.m. - 8:00 p.m.	(3 hours weekly)
Sunday	11:00 a.m. - 1:00 p.m.	(2 hours weekly)
	6:00 p.m. - 9:00 p.m.	(3 hours weekly)

Additional variable hours for schools, hospitals, and home visits.

Minimum total weekly hours 32 hours weekly.

As stated above, the Bureau interprets the statute and the regulations to require that a beneficiary's qualifying two years of religious work be full-time and salaried. The Bureau defines "full-time" employment as 35-40 hours per week. In this case, the petitioning church indicated that the beneficiary works a minimum of 32 hours per week with "additional variable hours for schools, hospitals, and home visits." Counsel states on appeal that the

beneficiary's duties include visiting the colleges and universities attended by the youth members of the church approximately four hours per week. In an attempt to corroborate this statement, counsel submits a letter from Frans Anthony, who identifies himself as a student at California State University at Fullerton. It is noted that Mr. Anthony does not state he is a member of the petitioning church. Mr. Anthony states:

> She would visit us weekly at our campus to spread the words of gospel, and her visits would last at least four hours each time, because she would devote a lot of her time to our personal religious experiences and issues.

Mr. Anthony has not provided specific information regarding the hours and days the beneficiary purportedly visits his campus each week, nor has he provided any independent evidence to corroborate his statements.

On appeal, counsel submits a letter from Purnama A. Gunawan, the petitioning church's Chief Financial Officer. This individual states that the beneficiary is a full-time employee of the church because she must also visit college and university campuses, homes, and hospitals, usually on Monday or Tuesday, and that these visits usually last from 1:00 p.m. to 7:00 p.m. Again, neither counsel nor the petitioning church has provided any independent evidence to corroborate these statements. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without income tax returns and W-2's, the Bureau is unable to determine how and whether the beneficiary has been employed.

Further, while the determination of an individual's status or duties within a religious organization is not under the Bureau's purview, the determination as to the individual's qualifications to receive benefits under the immigration laws of the United States rests within the Bureau. Authority over the latter determination lies not with any ecclesiastical body but with the secular authorities of the United States. *Matter of Hall*, 18 I&N Dec. 203 (BIA 1982); *Matter of Rhee*, 16 I&N Dec. 607 (BIA

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.